

OFFICIAL FILE

ORIGINAL

ILLINOIS COMMERCE COMMISSION

BEFORE THE

ILLINOIS COMMERCE COMMISSION

GTE NORTH INCORPORATED)
GTE SOUTH INCORPORATED, and)
BLUESTAR COMMUNICATIONS, INC.)

00-00-23

Joint Petition of GTE North Incorporated,)
GTE South Incorporated, and)
BlueStar Communications, Inc. For)
Adoption Pursuant To 47 U.S.C.)
§ 252 (i) Regarding Adoption)
of an Interconnection Agreement)

JOINT PETITION OF GTE NORTH INCORPORATED, GTE SOUTH INCORPORATED,
AND BLUESTAR COMMUNICATIONS, INC. REGARDING ADOPTION OF AN
INTERCONNECTION AGREEMENT

GTE North Incorporated and GTE South Incorporated (collectively ("GTE")) and BlueStar Communications, Inc ("BlueStar"), Joint Petitioners, pursuant to 47 U.S.C. § 252(i), petition the Illinois Commerce Commission regarding the adoption of an interconnection agreement between GTE and BlueStar, on the following grounds:

ILLINOIS
COMMERCE COMMISSION
JAN 11 10 00 AM '00
CLERK'S OFFICE

1. Joint Petitioners GTE North Incorporated and GTE South Incorporated are each telecommunications carriers within the meaning of Section 13-202 of the Universal Telephone Protection Act of 1985, 220 ILCS 5/13-100, et seq. and each is authorized to provide and is currently providing, intraMSA exchange and interexchange telecommunications services to customers within certain certificated areas of the State of Illinois.

2. Joint Petitioner BlueStar represents that it is an authorized provider of local dialtone telecommunications service within the State of Illinois.

3. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (“Federal Act”), BlueStar notified GTE that it desired to adopt the terms of the Interconnection Agreement (the “Agreement”) between GTE and AT&T Communications, approved by the Illinois Commerce Commission (the “Commission”) in Docket No. 99-AA-001. Subsequent to this, GTE and BlueStar signed a letter relating to BlueStar’s adoption of the terms of the Agreement. A copy of said letter is attached as Exhibit 1.

4. Section 252(i) of the Federal Act provides:

(i) Availability to other telecommunications carriers:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Commission approved the Agreement pursuant to Section 252(e) of the Federal Act. Accordingly, per Section 252(i) of the Federal Act, BlueStar has the right to adopt the Agreement’s terms.’

5. Subject to the terms of the letter attached as Exhibit 1, there are no outstanding issues between GTE and BlueStar relating to such adoption.

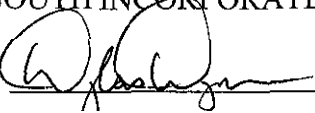
¹ GTE is submitting this petition pursuant to Section 252(i) of the Telecommunications Act of 1996 to notify the Commission of the adoption described herein. With respect to the prior applications of this nature, the Commission has elected to treat the adopted terms as a negotiated agreement. Because Section 252(i) requires the adoption to be implemented as a matter of law, GTE does not agree with the Commission’s characterization of these agreements as negotiated agreement. Nonetheless, GTE shall abide by the adopted terms in accordance with, and subject to, the adoption letter executed by GTE that is being submitted with this application as Exhibit 1.

6. As stated in the attached verified Statement in Support of an Adoption of Interconnection Agreement, attached as Exhibit 2, GTE will continue to make the arrangements set forth in the Agreement available on the same terms and conditions to any duly authorized telecommunications carrier operating within the State of Illinois to the extent required and permitted under Section 252(i) of the Federal Act. Therefore, this filing is not discriminatory.

WHEREFORE, GTE and BlueStar respectfully submit this Adoption of an Interconnection Agreement on this day of JANUARY

GTE NORTH INCORPORATED
GTE SOUTH INCORPORATED

By:



Tracy D. Pagliara
GTE Service Corporation
600 Hidden Ridge
HQE03J36
Irving, TX 75038

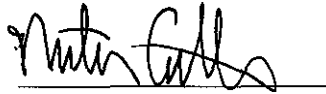
Tel No. (972) 718-6362
Fax No. (972) 718-1250

Douglas Dziak
HUNTON & WILLIAMS
1900 K Street, N.W.
Suite 1200
Washington, DC. 20006
Tel. No.: (202) 955-1880
Fax No.: (202) 778-2201

ATTORNEYS FOR GTE NORTH
INCORPORATED AND GTE SOUTH
INCORPORATED

BLUESTAR COMMUNICATIONS, INC.

By:



Norton Cutler
BlueStar Communications, Inc.
Vice President & General Counsel
414 Union Street, 9th Floor
Bank of America Building
Nashville, TN 37219
Tel. No. (615) 346-3848
Fax No. (615) 255-2102

FOR BLUESTAR COMMUNICATIONS, INC.

STATE OF Tennessee

)

)

ss

VERIFICATION

COUNTY OF Davidson

)

Norton Cutler, being first duly sworn, deposes and states that he is the VP Regulatory / General Counsel for BlueStar Communications, Inc.; that he is authorized by BlueStar Communications, Inc. to make this verification; that he has read the above and foregoing Joint Petition Regarding Adoption of an Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated, and BlueStar Communications, Inc. and knows the contents thereof; and that said contents are true to the best of his knowledge, information and belief.

Norton Cutler

Norton Cutler, VP Regulatory & General Counsel

Subscribed and sworn to before me, a notary public for the State of Tenn. this -
day 20th of December, &

Audrey L. Salih

Notary Public

My Commission Expires: 3-24-01

STATE OF ILLINOIS

COUNTY OF _____

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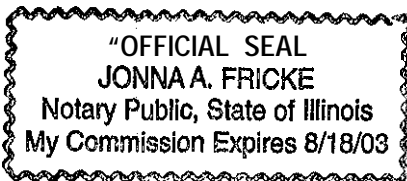
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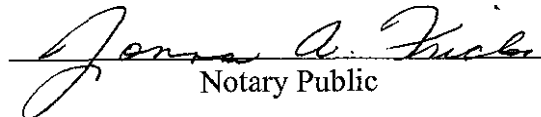
VERIFICATION

James R. Hargrave, being first duly sworn, deposes and states that he is the Assistant Vice President-Regulatory & Governmental Affairs for GTE North Incorporated, and as such; that he is authorized by GTE North Incorporated and GTE South Incorporated to make this verification; that he has read the above and foregoing Statement in Support of an Adoption of an Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated, and BlueStar Communications, Inc. and knows the contents thereof; and that said contents are true to the best of his knowledge, information and belief.


Assistant Vice President-Regulatory & Governmental
Affairs

Subscribed and sworn to before me, a notary public for the State of Illinois this/D day
of JANUARY, 2000.




Notary Public

My Commission Expires:

Connie Nicholas
 Assistant Vice President
 Wholesale Markets-Interconnection



GTE Network
 Services

HQE03B28
 600 Hidden Ridge
 P.O. Box 152092
 Irving, TX 75038
 972/718-4586
 FAX 972/719-1523

November 30, 1999

Mr. Norton Cutler
 Vice President & General Counsel
 BlueStar Communications, Inc.
 401 Church Street, 24th Floor
 Nashville, TN 37219

Dear Mr. Cutler:

GTE has received your request stating that, under Section 252(i) of the Telecommunications Act of 1996, BlueStar Communications, Inc. (BlueStar) wishes to adopt the terms of the Interconnection Agreement between AT&T Communications (AT&T) and GTE that was approved by the Commission as an effective agreement in the State of Illinois in Docket No. 99-AA-001 (Terms)¹. I understand BlueStar has a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuits decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuits rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all **UNEs**, had failed to implement section 251 (d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the **ILEC's** network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the **ILEC provide the UNE**. The Court therefore **vacated** in its entirety the FCC rule setting forth the **UNEs** that the **ILEC** is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Terms requiring GTE to **provide UNEs** are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that **are already** combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that **ILEC** concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which **BlueStar** seeks to adopt do not reflect the Courts decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on **UNEs**, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all **UNEs** called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, **BlueStar** will not seek UNE "platforms," or "already bundled" combinations of **UNEs**.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide **UNEs** unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of **sections 251 and 252** of Title 47 of the United States Code.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is the FCC gave the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 – 976, etc)".

In sum, GTE believes its proposal as described above would maintain the status quo until the legal landscape is settled.

BlueStar's adoption of the AT&T Terms shall become effective upon filing of this letter with the Illinois Commerce Commission and remain in effect no longer than the date the AT&T Terms are terminated. The AT&T agreement is currently scheduled to expire on June 28, 2002.

As these Terms are being adopted by **BlueStar** pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of its position as to the illegality or unreasonableness of certain Arbitrated Provisions or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Arbitrated Provisions, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant with respect to the Arbitrated Provisions, or to seek review in any way of any provisions included in these Terms as a result of **BlueStar's** 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or **BlueStar** that any Arbitrated Provisions comply with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and **BlueStar** expressly reserve their full right to assert and pursue claims arising from or related to the Arbitrated Provisions. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals,

Should **BlueStar** attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption,

Please indicate by your countersignature on this letter that you are agreeing to an understanding of and commitment to the following three points:

- (A) **BlueStar** adopts the Terms of the AT&T agreement for interconnection with GTE and in applying the Terms, agrees that **BlueStar** be substituted in place of AT&T in the Terms wherever appropriate
- (B) **BlueStar** requests that notice to **BlueStar** as may be required under the Terms shall be provided as follows:

To : **BlueStar Communications, Inc.**
Attention: Norton Cutler
Vice President and General Counsel
401 Church Street, 24th Floor
Nashville, TN 37219
Telephone number: 615/255-2000
Facsimile number: 615/255-2102

Norton Cutler
November 30, 1999
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- (C) **BlueStar** represents and warrants that it is a certified provider of local ~~dialtone~~ service in the State of Illinois and that its adoption of the Terms will cover services in the State of Illinois only.

Sincerely,

GTE North Incorporated
GTE South Incorporated



Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C:

BlueStar Communications, Inc.



For **BlueStar** Communications, Inc.

- c: R. Bates -- NC999142 -- Durham, NC
D. Dye - HQE03B73 - Irving, TX
A. Lowery -- NC999142 -- Durham, NC

BEFORE THE
ILLINOIS COMMERCE COMMISSION

GTE NORTH INCORPORATED)
 GTE SOUTH INCORPORATED, and)
 BLUESTAR COMMUNICATIONS, INC.)
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 Joint Petition of GTE North Incorporated,)
 GTE South Incorporated, and)
 BlueStar Communications, Inc. For)
 Adoption Pursuant To 47 U.S.C.)
 § 252 (i) Regarding Adoption)
 of an Interconnection Agreement)

STATEMENT IN SUPPORT OF
ADOPTION OF AN INTERCONNECTION AGREEMENT
AMONG GTE NORTH INCORPORATED.
GTE SOUTH INCORPORATED AND BLUESTAR COMMUNICATIONS, INC.

GTE North Incorporated and GTE South Incorporated, Joint Petitioners herein, make the following verified Statement in Support of Adoption of an Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated and BlueStar Communications, Inc.

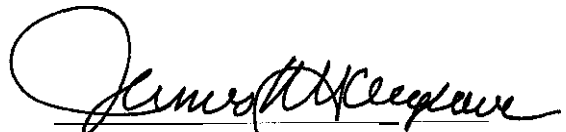
1. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the “Federal Act”), BlueStar Communications, Inc. (“BlueStar”) notified GTE North Incorporated and GTE South Incorporated (collectively, “GTE”) that it desired to adopt the terms of the Interconnection Agreement (“Agreement”) between GTE and AT&T Communications approved by the Illinois Commerce Commission in Docket No. 99-AA-001. Subsequent to this, GTE and BlueStar signed adoption letters relating to BlueStar’s adoption of the terms of the Agreement.

2. GTE will continue to make the arrangements set forth in the Agreement available on the same terms and conditions to any duly authorized telecommunications carrier operating

territories within the State of Illinois to the extent required and permitted under Section 252(i) of the Federal Act. Thus, this tiling is not discriminatory.

GTE North Incorporated and GTE South Incorporated respectfully submit the Adoption of an Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated, and BlueStar Communications, Inc.

Respectfully submitted this 10 day of JANUARY 2000


JAMES R. HARGRAVE
Assistant Vice President-Regulatory
& Governmental Affairs